

The background of the entire page is a close-up, slightly blurred image of the United States flag, showing the stars and stripes in a draped, wavy pattern. The colors are vibrant, with deep reds, bright whites, and a dark blue field with white stars.

ILLINOIS NATIONAL GUARD

TPP 904-8


**Labor and Employee
Relations**

SUPERVISOR'S HANDBOOK

This supersedes Technician Personnel Plan 904, dated 1 October 1996 Chapter 7 Labor/Employee Relations and Services and chapter 4 part V, Supervisory Records.

Users of this publication are invited to send comments and suggested improvements, through command channels, to The Adjutant General of Illinois, ATTN: HRO, 1301 N. MacArthur Blvd, Springfield, Illinois 62702-2399

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LABOR MANAGEMENT RELATIONS

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1-1 GENERAL:

a. As a supervisor or manager in the Illinois National Guard, you make decisions that impact the working conditions of bargaining unit employees on a daily basis. Therefore it is critical for you to have an understanding of your labor relations responsibilities and how to make these responsibilities fit into your particular work area. It is also important for you to maintain the military aspect of the technicians' position in their day to day work activities.

b. The Labor Management Relations (LMR) program is a dynamic program that can, at times, be confusing and challenging. This portion of the handbook is designed to help you in meeting these challenges and providing answers to matters that you will encounter on a daily basis when making decisions impacting the working conditions of bargaining unit employees. For many supervisors, the most confusing aspect of the labor relations program is the uncertainty as to the actions that must be taken to comply with the Federal Service Labor-Management Relations Statute.

c. The Labor Relations Specialist (LRS) in the Human Resource Office provides guidance and assistance to managers and supervisors in meeting the challenges you will encounter. You are encouraged to take advantage of the LRS's services.

1-2 PURPOSE AND SCOPE:

a. The authority for labor/management relations (LMR) in the Federal sector is derived from Chapter 71 of the Civil Service Reform Act of 1978. Before the CSRA, participation in union activities was established by the Executive Orders and administered through the Assistant Secretary of Labor and the Civil Service Commission. The Federal Labor Relations Authority (FLRA) was established by the Reform Act as an independent administrative and appellate authority with a wide-range of labor relations responsibilities in the Federal sector.

b. The Federal LMR program is applicable to National Guard technicians when in a technician status, which is employment pursuant to 32 USC 709. In the event of conflict between the provisions of this handbook and the negotiated labor agreement, the latter shall prevail.

c. In the National Guard, eligible bargaining unit technicians are free to join and participate in recognized labor organizations or unions. Presently, there are five bargaining units representing our technicians. These bargaining units include two different national federal unions. They are:

(1) Laborers International Union of North America (LIUNA) Local 1655 (Chicago Area ARNG)

(2) Association of Civilian Technicians (ACT) Chapter 120 (Downstate ARNG)

(3) Association of Civilian Technicians (ACT) Chapter 34 (Peoria ANG Base)

(4) Association of Civilian Technicians (ACT) Chapter 106
(Springfield ANG Base)

(5) Association of Civilian Technicians (ACT) Chapter 111
(Scott AF Base)

d. If a supervisor is unsure which union represents a particular technician, clarification should be sought from the LRS in HRO.

1-3 OBJECTIVES: The LMR program is designed to enhance efficiency of government operations and the well being of federal employees by:

a. Encouraging the achievement of high standards of employee performance and the continual development and implementation of modern and progressive work practices to facilitate improved employee performance and efficiency.

b. Providing employees an opportunity to participate in the formulation and implementation of personnel policies and practices affecting conditions of employment.

c. Improving employee participation through the maintenance of constructive and cooperative relations between labor organizations and management officials.

d. Promoting effective labor-management relations through a clear statement of the respective rights and obligations of labor organizations and agency management.

e. Establishing policies to govern agency management in all dealings with federal employees and organizations representing them.

1-4 BASIC POLICIES AND PRINCIPLES: The following basic policies and principles shall govern LMR in the Illinois National Guard technician program:

a. The Adjutant General of Illinois is responsible for establishing and maintaining effective labor-management relations.

b. Effective labor-management relations are a basic part of the responsibility of management officials (down to and including first-level supervisors) at all levels.

c. There is a mutual obligation shared by management and labor to deal with each other constructively, to uphold the integrity and efficiency of public service, and to honor the rights of individual technicians.

d. The Adjutant General has designated the HRO and LRS as the principal contact points on LMR matters.

e. Labor organizations certified as the exclusive representative of technicians have a legitimate interest in matters concerning grievances, technician personnel policies and practices, or other matters affecting working conditions of technicians within the unit of recognition. Care shall be taken to insure that information concerning

such matters is shared with appropriate representatives of the labor organization by the following means:

(1) Statewide application. The LRS in HRO will normally present matters or changes of statewide interest and application to the appropriate labor organization official.

(2) Local application. The appropriate unit/facility supervisor will normally present matters or changes of local or unit/facility interest or application to the appropriate union official as may be prescribed by the Agreement, which normally should be the designated area steward.

f. The achievement of modern and efficient work practices and a commitment to high standards of performance are essential elements to the LMR program. Managers must retain the ability and authority to determine work methods, assign work, and make other decisions that are basic to the efficient and effective management of the public enterprise and accomplishment of the national and state missions of the Illinois National Guard.

g. Nothing in this TP Plan or in any Agreement entered into shall restrict the Illinois National Guard in the taking of actions necessary to carry out its mission during emergency situations.

h. Supervisory or management officials shall not interfere with the free choice of technicians in representational matters. Managers will take actions to establish positive and constructive relationships with the labor organization chosen as the exclusive representative of the employees in the bargaining unit. Management officials and supervisors shall:

(1) Remain neutral in matters concerning labor organization membership and representation to the extent required by law. (NOTE: Under no circumstance will management officials or supervisors initiate, circulate, or provide assistance in connection with the circulation of a de-certification petition for signature by employees, or poll individual employees as to their membership in or desire to be represented by a labor organization.)

(2) Represent management in administering the negotiated agreement and express management's viewpoints in the day-to-day work relationships with local union officials.

(3) Deal with labor organization representatives on appropriate matters. If the matter is outside the jurisdiction of a management official or supervisor, the issue will be referred to the LRS in the HRO.

(4) Participate in contract negotiations with labor organization representatives when so designated by The Adjutant General.

(5) Keep records of significant dealings with union representatives including records showing problems, grievances, misunderstandings and complaints experienced in administering the Agreement, the Agreement clause concerned, and the solution of the

matter. Remain alert to the administration of the Agreement in terms of its effect on economic factors relating to the operation and maintenance of the installation.

(6) Participate in third party administrative proceedings as required.

(7) Control and report the use of official time for representational purposes by any of their subordinate personnel.

1-5 EMPLOYEE RIGHTS (5 USC 7102): Bargaining unit employees have the right to:

- a. Form, join, or assist a labor organization.
- b. Not form, join, or assist a labor organization.
- c. Act as a representative for labor organization.
 - (1) Shop Steward or Chief Steward
 - (2) Local President
 - (3) Regional or National Representative
- d. As a representative, present labor organization views to the Agency head, other Officials of the Executive Branch, or Congress.
- e. Bargain collectively through labor organization with respect to conditions of employment.
- f. Exercise these rights without fear of penalty or reprisal from Agency management.

1-6 BARGAINING UNIT (5 USC 7103 and 7112): Is defined as a group of employees who have a common interest, and are represented by a labor organization in their dealings with Agency management.

- a. Exclusions to the bargaining unit are:
 - (1) Supervisors
 - (2) Management officials
 - (3) Confidential employees
 - (4) Professional employees, unless a majority of professional employees vote for inclusion in the unit.
 - (5) Employees engaged in:
 - (a) Personnel work in other than a purely clerical capacity
 - (b) Investigators directly affecting an agency's internal security
 - (c) Administering the provisions of Title 5, Chapter 71

(d) Work that directly affects national security

b. The definition of supervisor in LMR is different than for classification purposes. For LMR purposes a supervisor is a person who has the authority to take, or effectively recommend taking, any of the following actions with respect to at least one employee:

- (1) Hire
- (2) Promote
- (3) Recall
- (4) Discipline
- (5) Adjust grievances
- (6) Assign
- (7) Reward
- (8) Layoff
- (9) Remove
- (10) Direct
- (11) Transfer
- (12) Suspend
- (13) Furlough

1-7 UNION RIGHTS: The law provides the unions with certain rights. Supervisors must be cognizant of these rights to be in compliance with the LMR statute and with ILNG LMR Plan TPP 711.

a. Exclusive representative of employees in bargaining unit are entitled to act for and negotiate collective bargaining agreements for all employees in the unit.

b. Be given the opportunity to be represented at any formal discussion.

c. Be given the opportunity to be represented at any meeting with unit employees in connection with an investigation if the employee reasonably believes the meeting could result in disciplinary action and the employee requests union representation. (Weingarten Discussions)

d. Be given the advance notice of any proposed changes to established conditions of employment and an opportunity to negotiate over these proposed changes absent any clear and unmistakable waiver of this right.

1-8 UNION RESPONSIBILITIES (5 USC 7114): Along with rights comes responsibility, and the union must be responsible to its members and to management. The union's responsibilities are:

a. Represent interests of all bargaining unit members, regardless of union membership.

b. Negotiate with management in a "good faith" effort to determine conditions of employment.

1-9 OFFICIAL TIME (5 USC 7131): In the interests of efficiency in conducting government business and the economical use of Government time some activities the union members are involved in will be done in Official Time. Each labor agreement addresses official time, therefore it is very important that you know the requirements in the labor agreement(s) that you administer.

a. The definition of official time is: Duty time that is granted to union representatives to perform union representational functions, without charge to leave or loss of pay, when the employee would otherwise be in a duty status. Time is considered to be hours of work.

b. Official time is permitted for representational functions such as:

(1) Contract or mid-term negotiations.

(2) Representing employees who file grievances.

(3) Any proceeding before the Federal Labor Relations Authority.

(4) For any employee representing an exclusive representative or any employee represented by an exclusive representative in any amount the agency and the exclusive representative agree to be reasonable, necessary, and in the public interest.

c. Official Time is not permitted for conducting union's internal business, such as:

(1) Soliciting membership

(2) Collecting union dues

(3) Any matters relating to internal management and structure of union.

d. Compensatory time for official time is not permitted because:

(1) Representation is for the union and it is not for the primary benefit of the government as an employer.

(2) Time spent performing representational business outside an employee's normal workday is not considered the performance of hours of work within meaning of 5 USC §§ 5542 - 5544, the Fair Labor Standards Act, and 5 CFR 551.104 and 551.424.

1-10 FURNISHING OF INFORMATION (5 USC 7114(b)): Any and all requests for lists or names of units or activity employees must be cleared through the Labor Relations Specialist for release authority. The Illinois National Guard is obligated to furnish to the exclusive representative, upon request and, to the extent not prohibited by law, data:

- a. Which is normally maintained by the agency in the regular course of business;
- b. Which is reasonably available and necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of bargaining; and
- c. Which does not constitute guidance, advice, counsel, or training provided for management officials or supervisors, relating to collective bargaining.

1-11 FORMAL DISCUSSION (5 USC 7114(a)(2)(A)):

a. Definition: Discussion between one or more representatives of the Agency and one or more employees in the unit concerning any grievance or any personnel policy or practice or other general condition of employment.

b. Criteria: (See 10 FLRA No.24 (1982); See also 52 FLRA No.17 (1996); a formal discussion is held if your answer is yes to one or more of the following questions:

- (1) Whether the individual who held the discussion is merely a first-level supervisor, or is higher in the management hierarchy;
- (2) Whether any other management representative attended;
- (3) Whether a formal agenda was established for the meeting;
- (4) Whether the employee's attendance is mandatory,

c. What is a discussion? The term "discussion" in the Statute is synonymous with "meeting" and no actual discussion or dialogue need occur for the meeting to constitute a formal discussion within the meaning of the Statute. See 37 FLRA No.60 (1990).

d. Union's Role.

(1) The opportunity to be represented at a formal discussion means more than merely the right to be present. The right to be represented also means the right of the union representative to comment, speak and make statements.

(2) On the other hand, this right does not entitle a union representative to take charge of, usurp, or disrupt the meeting. See 38 FLRA No.61 (1990).

(3) Comments by a union representative must be governed by a rule of reasonableness, which requires the respect for orderly procedures.

e. Discussions That Are Not Formal

- (1) Work assignments
- (2) Progress reviews
- (3) Performance appraisal
- (4) Performance counseling
- (5) Counseling on conduct

f. Discharging Obligation

- (1) Give union reasonable advance notice of meeting (time, date, place, and subject to be discussed).
- (2) Provide union opportunity to attend.

Questions and Answers

1. If an employee approaches me and asks a question about work rules or personnel practices, is this formal discussion or meeting?

Under normal circumstances it is not a formal discussion. Since the employee initiated the conversation in an informal setting, the supervisor is free to respond to the employee's question. However, if, during the conversation, the supervisor establishes or changes general personnel practices or work rules the meeting or discussion could be considered formal. In addition, any discussion you have with the employee concerning a grievance he or she may have filed is a formal meeting.

2. Suppose I want to call an employee's attention to an existing work procedure--is that a formal meeting or discussion?

The discussion of work procedures, assignments, or performances is normally not a formal meeting or discussion under the law. Nor is counseling an employee regarding individual performance. For example, reminding an employee to wear safety equipment is not a formal meeting or discussion under the law.

3. I have decided to hold a formal meeting or discussion. What happens next?

Contact your Labor Relations Specialist to find out the method of inviting the union as well as the appropriate union official to be invited. Having learned that, then an invitation should be extended to the union.

4. If I plan to hold a formal discussion or meeting with employees, do I have to tell the employees that he or she has a right to union representation?

Your obligation is to tell the union of the scheduled meeting or discussion and give the union the opportunity to be present. You do not have to tell the employees of the union's right to attend.

5. If the employee does not want a union representative at a formal discussion or meeting but the union demands to be present, do I allow the union representative in the meeting or discussion?

Yes. Since the employee does not want to be represented by the union the union representative is representing the interests of the bargaining unit.

1-12 INVESTIGATIVE MEETING/WEINGARTEN (5 USC 7114(a)(2)(B)):

a. Definition: A union must be given the opportunity to be represented at an examination of a unit employee by an agency representative in connection with an investigation, if:

(1) The employee reasonably believes the examination may result in disciplinary action; and

(2) The employee requests representation.

b. Management's Obligations. In all cases where the employee requests union representation, contact your Labor Relations Specialist for guidance and assistance. Some possible options would include:

(1) Stop discussion; continue investigation by other means which do not involve interviewing bargaining unit employees.

(2) Temporarily stop meeting to allow union representative to attend.

c. Union's Role.

(1) Ask relevant questions.

(2) Assist employee to answer.

(3) Cannot answer questions, break up meeting, or prevent Agency from carrying out investigation.

Questions and Answers.

1. Does the interview or examination have to occur in connection with a formal investigation?

No, an "investigation" occurs even when a supervisor seeks information to determine whether discipline should be taken against an employee. For example, an employee is suspected of being late for work, and the supervisor calls him or her into the office to determine if that is the case and, if so, why.

2. If I choose to conduct the investigatory interview with a union representative present, to what extent must I allow the union representative to participate in the interview?

The Supreme Court has said that the:

- a. Purpose of the union representative is to assist the employee by clarifying facts or bringing out favorable information.
- b. Employer may insist on hearing the employee's account of the incident.
- c. Employer need not permit an argument to develop with the union representative.
- d. Employer has no duty to bargain with the union representative.

3. Does this mean that I can force the union to be quiet during the interview?

Absolutely not. Although you may insist that the employee, not the union representative, answer your questions, you must allow the union representative an opportunity to clarify facts or bring out favorable information.

4. What do I do if the union representative becomes so argumentative as to completely disrupt the interview process?

Warn the union representative and employee that if union representative continues to disrupt the meeting, you will be forced to end the interview and make your disciplinary decision on the basis of other information (without the benefit of the employee's input).

1-13 MANAGEMENT RIGHTS (5 USC 7106): As the union, management has rights as well. Supervisors and management officials need to know and understand their rights so they can effectively work with unions in their work units. The following should help you identify issues that are reserved for management.

- a. 5 U.S.C.S 7106(a) Reserves to Management the right to:
 - (1) Determine the Agency's mission, budget, organization, number of employees, and internal security practices;
 - (2) Hire, assign, direct, lay off, and retain employees;
 - (3) Suspend, remove, reduce-in-grade or pay, or discipline employees;
 - (4) Assign work, make determinations with respect to contracting out, and determine the personnel by which operations will be conducted;
 - (5) Select and appoint employees from appropriate sources;
- and;

(6) Take whatever actions may be necessary to carry out the Agency mission during emergencies.

b. Decisions to act in these areas are management's prerogative and the union cannot negotiate on any of these rights. However, procedures for the exercise of these rights and arrangements that affect employees may be subject to negotiation.

c. The technology, methods, and means of performing work.

(1) Technology is defined as the technical method used in accomplishing or furthering the performance of the agency's work.

(2) Method is defined as the way in which an agency performs its work (how).

(3) Means is defined as any instrumentality including any agent, tool, device, measure, plan or policy used by the agency for accomplishing or furthering the performance of its work.

1-14 MAKING CHANGES IN CONDITIONS OF EMPLOYMENT:

a. Management's Role. When management wants to make a change that affects conditions of employment of bargaining unit employees, the union must be given **reasonable advance notice** of the proposed change. Normally, your collective bargaining agreement will outline how much, if any, specific advance notice is required with your union when making changes that affect conditions of employment of bargaining unit employees.

b. To recognize whether you have an obligation to negotiate, ask the following questions on a proposed action you wish to take.

(1) Does the decision produce a change or will the decision continue to use an existing way of doing things?

(2) Does the change affect bargaining unit employees?

(3) Does the change affect conditions of employment?

(4) Is the change significant?

c. If you have questions concerning these changes contact the Labor Relations Specialist for assistance.

1-15 CONTRACT ADMINISTRATION:

a. Definition: How the terms of the labor agreement will be interpreted, applied, and enforced.

b. Collective Bargaining Agreement: a document that establishes the framework for labor-management relations. It contains those working conditions mutually agreed to by union and management.

c. Contract Interpretation Principles: Administer agreement consistently with the intent of the parties whom negotiated the

agreement. Only the LRS is authorized to interpret a CBA if this situation develops. The LRS takes the following into consideration:

- (1) Language of agreement
- (2) Bargaining history
- (3) Past practice
- (4) Concern condition of employment
- (5) Clear and consistent
- (6) Long standing
- (7) Accepted by both parties
- (8) Not contrary to law, regulation, collective bargaining agreement

d. Managers should not make decisions on contractual intent. These questions should be raised to the LRS.

1-16 THE UNION STEWARD:

a. The union steward is an employee who serves as a representative of the union at a specific work-site. The stewards may be elected by union members or appointed by officers of the union.

b. The steward's duties are of two kinds:

(1) Representing the union and bargaining unit employees in dealing with management. These are called representational activities and include handling grievances, monitoring the contract, keeping employees informed of working condition changes, and meeting with management. Stewards may be granted official time, without charge to leave, for these representational activities. The amount of time granted is negotiable.

(2) Conducting internal union business such as participating in elections of union officials, soliciting membership, collecting dues and attending union meetings. The use of official time for conducting internal union business is prohibited by Title V. Such activities can only be done on non-duty time.

(3) For representational activities, management should recognize that fellow union members place the steward in a position of trust and should accord the steward the cooperation and respect necessary in order for the steward to do an effective job.

(4) Since stewards are responsible for representing the union and all bargaining unit employees, it is important that they have enough time to carry out representational responsibilities and have access to bargaining unit employees. At the same time, the steward, as an employee, is responsible for performing the assigned duties of his or her position. The goal in specifying a steward's activities in the contract should be to balance the steward's responsibility for

representing the union and bargaining unit employees with management's primary responsibility for mission accomplishment.

1-17 THE SUPERVISOR-STEWARD-RELATIONSHIP: Supervisors and stewards play an extremely important role in determining whether the labor-management relationship is a good or bad one. On a day-to-day basis, it is the supervisor who has primary responsibility for administering the contract and the steward whom has primary responsibility for policing the administration. The supervisor and the steward:

a. Must know the agency's personnel policies, regulations, and the contract.

b. Must understand and accept each other's role.

c. Are under pressure from both sides and must try to resolve problems without violating the contract or going beyond the intent of labor-management policies.

1-18 NEGOTIATED GRIEVANCE PROCEDURE (5 USC 7121):

a. Grievance means any complaint:

(1) By any employee concerning any matter relating to the employment of the employee;

(2) By any labor organization concerning any matter relating to the employment of the employee;

(3) By any employee, labor organization, or agency concerning the effect of interpretation or a claim of breach of a collective bargaining agreement; or

(4) Any claimed violation, misinterpretation, or misapplication of any law, rule, or regulation affecting conditions of employment.

b. Exclusions.

(1) Any claimed violation of 5 U.S.C. § 7321 (relating to prohibited political activities);

(2) Retirement, life insurance, or health insurance;

(3) A suspension or removal under 5 U.S.C. § 7532 (national security);

(4) Any examination, certification, or appointment; or

(5) Classification of any position that does not result in the reduction in grade or pay of an employee; or

(6) Non-selection for a position.

c. Procedures.

(1) Assure union right to present and process grievances on behalf of itself or any bargaining unit employees;

(2) Assure an employee the right to present grievances on their behalf, and assure the union the right to be present during the grievance process;

(3) Provide for final and binding arbitration; and

(4) Provide for settlement of questions of arbitrability.

d. Grievance Handling.

(1) Before meeting

(a) Inform union

(b) Ensure privacy

(2) Set the tone, questions only

(a) What's the problem?

(b) What are the facts?

(c) Who? What? When? Where? Why?

(d) What (exactly) do you want?

(e) Why are you entitled to that?

(f) Where in the Contract/Law/Regulation does it say that?

(3) Offer no resolutions at the meeting

(4) Investigate

(a) Check the facts.

(b) Check the Contract/Laws/Regulations

(c) What have other grievance decisions said?

(d) What have arbitrators said?

(e) Is it a "true" practice?

(f) What does management want to do?

(g) What will it cost to fight?

(5) Make a timely decision (contract timeframe for grievance response)

(a) Be wary of partial relief.

(b) Is it grievable?

(c) If you agree to settle the grievance, grievance must be dropped.

(6) Things to avoid

(a) Little or no research

(b) Rubber-stamping

(c) Personality clashes and power struggles

(d) Giving the farm away to make the grievance disappear.

e. The Steward's Role in Processing a Grievance.

(1) One of the steward's most important roles is to handle grievances. Although the supervisor exercises certain authority over the steward as an employee, when the supervisor and the steward discuss grievances, the steward acts as an official representative of the union.

(2) Stewards are trained, as are supervisors, to settle a grievance as close to the source of the dispute as is possible. Like supervisors, they have to live with any settlement reached. If they can arrive at a settlement, rather than having one imposed, both parties benefit.

(3) In handling grievances, stewards win or lose cases based on how carefully they have investigated the problem. This investigation may involve conducting interviews, determining pertinent dates, and getting names of witnesses. Stewards must ask questions for clarification, examine records, distinguish between fact and opinion, and decide what is relevant to the complaint. They also have to assure themselves that the grievance is legitimate.

(4) When a steward receives a case, he or she should determine whether a basis for the grievance exists. They should investigate to see if:

(a) The contract has been violated.

(b) The law has been violated.

(c) Government-wide rules and regulations have been violated.

(d) Agency regulations have been violated.

(e) Past practices have been changed.

(f) Employees are being treated unfairly.

(5) Just as stewards determine whether bargaining unit employees have legitimate grievances, supervisors should analyze any grievance received to determine whether there has been a violation of contract, law, regulation, past practice, or unfair employee treatment.

If an employee files a grievance, contact your Labor Relations Specialist for assistance.

1-19 ARBITRATION:

a. If the grievance is not resolved either party may take the grievance to arbitration. This is the final step in the grievance process. At this point the case will be handled entirely by the LRS and may have assistance from the State Staff Judge Advocate.

b. Managers, supervisors, and employees may be called as witnesses or required to produce documents or other types of evidence for the hearing.

c. Each labor agreement outlines the process for arbitration.

d. The arbitration process is expensive. There are costs for the arbitrator and for the transcripts. Usually both the union and the agency share the costs.

e. The parties lose control of the final decision. However the arbitrator may try to mediate a settlement. If the parties can not come to a settlement, the arbitrator's decision is binding.

f. Decisions can be appealed to the FLRA (depending on the nature of the grievance.)

1-20 UNFAIR LABOR PRACTICE (ULP):

a. Definition. An alleged violation of a right protected by the Federal Service Labor-Management Relations Statute (5 U.S.C. Chapter 71); by an employee, the union or management can file a ULP.

b. Agency ULP Charges

(1) Section 7116(a)(1) "Management shall not interfere with, restrain or coerce any employee in the exercise of its rights under the Statute." Examples include:

(a) Threatening employees with reprisal

(b) Interrogating unit employees on union activity

(2) Section 7116(a)(2) "Management shall not encourage or discourage membership in a labor organization by discrimination in connection with hiring, tenure, promotion or other conditions of employment." Examples include:

(a) Failure to promote because of union activities

(b) Discipline in retaliation for activity as a union representative

(3) Section 7116(a)(3) "Management shall not sponsor, control, or otherwise assist a labor organization...." Examples include:

(a) Campaigning for a specific individual

(b) Help union organize membership drive

(4) Section 7116(a)(4) "Management cannot discipline or otherwise discriminate against an employee because the employee has filed a complaint, affidavit, or given any information or testimony...." An example is:

Transfer employee to undesirable job because they filed a ULP

(5) Section 7116(a)(5) "Agency management shall not refuse to consult or negotiate in good faith with a labor organization...." Examples include:

(a) Implement change in condition of employment without notifying union

(b) Bypass union (directly notify employees of a change without union present)

(c) Unilaterally change established past practice, absent a clear and unmistakable waiver of bargaining rights

(d) Refusal to bargain

(6) Section 7116(a)(6) "Failing or refusing to cooperate in impasse procedure and impasse decisions...." An example is;

Refuse to provide the union official time for attendance at Impasse Panel hearing.

(7) Section 7116(a)(7) "An agency cannot enforce any rule or regulation (other than a rule or regulation implementing Section 2302 of Title V) which is in conflict with any applicable collective agreement if the agreement was in effect before the date the rule or regulation was prescribed."

(8) Section 7116(a)(8) "To otherwise fail or refuse to comply with any provision of the Statute...."

(a) Formal discussion

(b) Weingarten meeting

(c) Duty to supply information

c. Union ULP Charges.

(1) Section 7116(b)(1) "A labor organization shall not interfere with, restrain or coerce any employee in the exercise by the employee of any right under this chapter." Examples include:

(a) Expelling a member from the union for filing ULP against union.

(b) Suggesting to employees that they must become dues paying members in order to receive union representation.

(2) Section 7116(b)(2) "A labor organization shall not cause or attempt to cause an agency to discriminate against any employee in the exercise by the employee of any right under this chapter." An example is:

Encourage agency to discipline employee due to anti-union activities.

(3) Section 7116(b)(3) "A labor organization shall not coerce a member of the labor organization as punishment, reprisal, or for the purpose of hindering or impeding the member's work performance or productivity as an employee or the discharge of the member's duties as an employee "

Fining union members for violating an internal union policy concerning acceptance of overtime work as an agency employee.

(4) Section 7116(b)(4) "A labor organization shall not discriminate against an employee with regard to the terms or conditions of membership in the labor organization on the basis of race, color, creed, national origin, sex, age, preferential or non preferential civil service status, political affiliation, marital status, or handicapping condition." An example is:

Refuse to represent an employee due to race, color, creed....

(5) Section 7116(b)(5) "A labor organization shall not refuse to consult or negotiate in good faith with an agency...." An example is:

Failure to send representatives to negotiating table who have the authority to commit the union.

(6) Section 7116(b)(6) "Failing or refusing to cooperate in impasse procedure and impasse decisions...." An example is:

Refuse to meet with mediator on issues at impasse.

(7) Section 7116(b)(7) "(A) To call, or participate in a strike, work stoppage, or slowdown, or picketing of an agency in a labor-management dispute if such picketing interferes with an agency 's operations, or (B) to condone any activity described in subparagraph (A) of this paragraph by failing to take action to prevent or stop such activity; or

(8) Section 7116(b)(8) "To otherwise fail or refuse to comply with any provision of the Statute...."

Use of official time for internal union business.

Questions and Answers

1. What is the relationship between grievances and ULPs?

There is a very close relationship because both actions stem from disagreements which arise from the three-way relationship that exists among employees, the union, and management.

2. Is there a difference between grievances and ULPs?

Yes, the differences relate mainly to the nature of the disagreement between the parties and the resolution procedure used to resolve the disagreement. Grievances relate to disagreements over the interpretation and application of a collective bargaining agreement between union or management or agency personnel regulations and are decided by an arbitrator. ULPs related to disagreements over the coverage and meaning of the labor law and are decided by the FLRA.

3. Can a violation of a collective bargaining agreement ever be a ULP?

Yes, it can, but only under the most extraordinary of circumstances. One of the parties to the agreement must knowingly, deliberately, and willfully violate the agreement. For example, a ULP occurred in a case where one of the parties to the labor agreement announced that the agreement was no longer in effect (even though it was) and that grievances would not be processed. However, given the federal law's broad definition of a grievance, a ULP can be filed as a grievance, if the employee or union chooses.

4. When may a ULP be filed?

A ULP may be filed anytime within 6 months of the date the injured party became aware of the violation of the labor law.

5. Who determines if a ULP has been committed and how is this done?

The FLRA decides ULPs and its process for determining if a ULP has been committed is divided into two phases.

The first is the charge phase. During this phase, a representative of one of the regional offices of the general counsel of the FLRA independently investigates the matter to see if there are sufficient grounds to issue a complaint.

If sufficient evidence does not exist then the FLRA regional office will dismiss the charges and drop the matter. The regional director's decision to drop the matter is subject to review by the FLRA general counsel. Decisions of the regional directors, however, are upheld in the overwhelming majority of cases.

If the regional office finds that sufficient evidence does exist to require a complete investigation, a formal complaint is issued and a hearing is scheduled. The purpose of the hearing is to develop facts sufficient for the FLRA to determine whether an unfair labor practice has, indeed, been committed.

6. What happens if the agency is found guilty of committing a ULP?

The FLRA may prescribe whatever remedy is necessary to correct the ULP. This may include revoking the management action that caused the ULP in the first place, and requiring management to go back to the situation as it existed before the ULP. Generally, however, the remedy consists of

requiring the guilty party to sign and post a notice to employees which indicates that it will stop committing the ULP and that it will not take such actions in the future.

1-21 FREE SPEECH:

a. The union is forever criticizing me but I'm never allowed to respond, because my response would be a ULP, right?

b. This is not quite true. As a legal matter, 5 U.S.C., Chapter 71, does allow freedom of expression for supervisors. Such expression, however, must not threaten to interfere with employee rights regarding union activity, membership, or representation; for example, any statement you make that may have a "chilling" effect upon an employee in the exercise of his or her rights may be a ULP. However, agency management may, in some instances, "correct the record" if erroneous or misleading union comments are made. In this regard, whether or not a manager's statement is a ULP often depends in the particular circumstances surrounding the incident. The best advice is to call your Labor Relations Specialist for advice before you say anything! This may be hard to do in the heat of an argument but it is the correct thing to do.

1-22 LABOR RELATIONS TERMS: The terms listed are those likely to be encountered most frequently in reading or discussing labor management relations. Knowing these terms will assist the supervisor in gaining a better understanding LMR.

ABROGATION TEST. A test the Federal Labor Relations Authority applies in determining whether an arbitration award enforcing a contract provision affecting rights reserved to management is deficient. If the provision at issue is an "arrangement" for employees adversely affected by the exercise of those rights, an award enforcing such a provision will not be set aside unless it "abrogates" those rights - i.e. unless it leaves management no discretion at all.

ACCRETION. When some employees are transferred to another employing entity whose employees are already represented by a union, the FLRA will often find that those employees have "accreted" to (i.e. become part of) the existing unit of the new employer, with the result that the transferred employees have a new exclusive representative along with a new employer.

ACTIONS DURING EMERGENCIES. Management's right "to take whatever actions may be necessary to carry out the agency mission during emergencies" doesn't come up in negotiability disputes very often. In cases decided thus far, the FLRA has held that this right is interfered with by proposals attempting to define "emergency" because such definitions would be inconsistent with management's right to independently determine whether an emergency exists.

ADMINISTRATIVE LAW JUDGE (ALJ)

An individual who conducts certain hearings and makes initial decisions on behalf of the Federal Labor Relations Authority (FLRA). Most of the hearings are for the purpose of adjudicating unfair labor practice complaints. The decision of an ALJ is final and non-precedent setting

unless one of the parties files an exception to the decision with the FLRA.

ADVERSE ACTION

An official personnel action, usually taken for disciplinary reasons, which adversely affects an employee and is of a severity such as suspension for more than 14 days, reduction in grade or status, or removal. For military technicians, the appeal system is established in TPR 752. The Adjutant General is the final appeal authority.

AGENCY HEAD REVIEW

A statutory requirement that negotiated agreements be reviewed for legal sufficiency by the head of the agency (or their designee). This must be accomplished within 30 days from the date the agreement is executed. If disapproved, the union can challenge those determinations by filing a negotiability petition or an unfair labor practice charge with the FLRA. If not approved or disapproved within that time, the agreement goes into effect and the legality and enforceability of its terms is decided in other forums (e.g., grievance or unfair labor practice proceedings).

AGREEMENT, NEGOTIATED. A collective bargaining agreement between the employer and the exclusive representative. A collective bargaining agreement must contain a negotiated grievance procedure. Also defined as a written agreement between an employer and a labor organization, usually for a definite term, defining conditions of employment, rights of handling issues that arise during the life of the agreement. [Also known as Agreement, CBA, Contract, Labor-Management Agreement or Negotiated Agreement.]

APPLICABLE LAWS

The FLRA has said that "applicable laws" within the meaning of Title 5, United States Code, section 7106(a)(2), include statutes, the Constitution, judicial decisions, certain Presidential executive orders, and regulations "having the force and effect of law"—i.e. regulations that (1) affect individual rights and obligations, (2) are promulgated pursuant to an explicit or implicit delegation of legislative authority by Congress, and (3) satisfy certain procedural requirements, such as those of the Administrative Procedures Act.

APPROPRIATE ARRANGEMENT. One of three exceptions to management's rights. Under title 5, United States Code, section 7106(b)(3), a proposal that interferes with management's rights can nonetheless be negotiable if the proposal constitutes an "arrangement" for employees adversely affected by the exercise of a management right and if the interference with the management right isn't "excessive" (as determined by an "excessive interference" balancing test).

APPROPRIATE UNIT (BARGAINING UNIT)

A grouping of employees that a union represents or seeks to represent and that the FLRA finds appropriate for collective bargaining purposes.

ARBITRATION

Method of resolving employment disputes through recourse to an impartial third party whose decision is usually final and binding. [See 'Interest Arbitration,' 'Grievance Arbitration,' and 5 U.S.C.7121 (b)]

ARBITRATOR

An impartial third party to whom disputing parties submit their differences for decision (award). An **ad hoc arbitrator** is one selected to act in a specific case or a limited group of cases. A **permanent arbitrator** is one selected to serve for the life of the agreement or a stipulated term, hearing all disputes that arise during this period.

ARBITRABILITY

Refers to whether a given issue is subject to arbitration under the negotiated agreement. If the parties disagree whether a matter is arbitrable or not, the arbitrator must resolve this threshold issue before reviewing the merits of the dispute.

ASSIGN EMPLOYEES

A management right relating to the assignment of employees to positions, shifts, and locations. This right includes discretion to determine "the personnel requirements of the work of the position, i.e., the qualifications and skills needed to do the work, as well as such job-related individual characteristics as judgment and reliability." It also includes discretion to determine the duration of the assignment.

ASSIGN WORK

A management right relating to the assignment of work to employees or positions. The right to assign work includes discretion to determine who is to perform the work; the kind; the amount of work to be performed; the manner in which it is to be performed, as well as when it is to be performed. It also includes "the right to determine the particular qualifications and skills needed to perform the work and to make judgments as to whether a particular employee meets those qualifications.

ATTORNEY FEES

In accordance with 5 U.S.C.5596 (Back Pay Act), an award of counsel fees if there is a determination by an arbitrator or the Merit Systems Protection Board that an unjustified or unwarranted personnel action has resulted in the withdrawal of a grievant's pay, allowances or differentials. The award must be in conjunction with an award of back pay on correction of the personnel action, the award must be reasonable and related to the personnel action, and the award must be in accordance with standards established under 5 U.S.C.7701(g). Under 5 U.S.C.7701 (g), the employee, to obtain fees, must be the prevailing party, the award must be in the interest of justice other than in a case involving discrimination), the fee must be reasonable, and it must have been incurred by the employee.

AUTOMATIC RENEWAL CLAUSE

Many, perhaps most, collective bargaining agreements in the Federal sector have a provision, usually located at the end of the agreement, stating that if neither party gives notice during the agreement's open period of its intent to reopen and renegotiate the agreement, the agreement will automatically renew itself for a period of x number of years.

AWARD

In labor-management arbitration, the final decision of an arbitrator, final and binding on both parties. In very limited circumstances, either party may appeal the arbitrator's decision to the Federal Labor Relations Authority (e.g. award is contrary to law).

BACK PAY

Pay, allowances, or differentials awarded to an employee for compensation lost due to an unjustified or unwarranted personnel action.

BARGAINING RIGHTS

Legally recognized right of the labor organization to represent employees in negotiations with employers.

BARGAINING (NEGOTIATING)

A ubiquitous process—sometimes informal and spontaneous, sometimes formal and deliberate—of offer and counteroffer whereby parties to the bargaining process try to reach agreement on the terms of exchange. Formal bargaining processes with associated rituals and bargaining routines vary, depending on their political, economic, and social context.

BARGAINING UNIT

A group of employees recognized by the employer or group of employers, or designated by the Federal Labor Relations Authority as appropriate to be represented by a labor organization for purposes of collective bargaining. In the Federal sector, employees do not have to be dues paying members of a union in order to be represented by the union. [For a related term, see **Labor Organization.**]

BROOKHAVEN WARNINGS

Even if the Union is notified that an Agency representative is going to interview a bargaining unit employee for an upcoming arbitration, and a Union representative attends this interview, this does NOT mean that "anything goes" as far as the manner of questioning. What the Agency may consider an "interview" from the Union perspective may be considered an "interrogation." The interview of the bargaining unit member should be voluntary and non-coercive. Brookhaven warnings are designed to minimize the potentially coercive impact of an Agency interview with an employee.

CHIEF STEWARD

A union official who assists and guides shop stewards. The roles they play within the union are determined by the union. The roles he or she plays in administering the contract are determined by the contract. For example, the negotiated grievance procedure may provide that the chief steward becomes the union representative if the grievance reaches a certain step in the grievance procedure.

CIVIL SERVICE REFORM ACT OF 1978 (CSRA)

Public Law 95-454 passed by the 95th Congress on October 13, 1978, which became effective on January 11, 1979. Title VII of the Act concerns Federal Service Labor-Management Relations and supersedes Executive Order 11491 as amended. This provided Federal employees a legal, statutory basis for their right to organize, bargain collectively, and participate through labor Unions in decisions which

affect their working conditions. Title VII is codified at 5 U.S.C. Chapter 71.

COLLECTIVE BARGAINING OR NEGOTIATIONS

The performance of the mutual obligation of the employer and the exclusive representative to meet at reasonable times, to consult and bargain in good faith, and upon request by either party to execute a written agreement with respect to terms and conditions of employment. This obligation does not compel either party to agree to proposals or make concessions.

COLLECTIVE BARGAINING AGREEMENT

A written agreement between an employer and a labor organization, usually for a definite term, defining conditions of employment, rights of employees and labor organizations, and procedures to be followed in settling disputes or handling issues that arise during the life of the agreement. [Also known as **Agreement, CBA, Contract or Negotiated Agreement.**]

COMPELLING NEED

Test used to determine whether a discretionary agency regulation that doesn't involve the exercise of management's rights is a valid limitation on the scope of bargaining. There are three "illustrative criteria" of compelling need: (1) the regulation is essential to the effective and efficient accomplishment of the mission of the agency, (2) the regulation is necessary to insure the maintenance of basic merit principles, and (3) the regulation implements a mandate of law or other authority (e.g. a regulation) in an essentially non-discretionary manner.

CONDITIONS OF EMPLOYMENT (COE)

Under Title 5, United States Code, section 7103(a)(14), conditions of employment "means personnel policies, practices, and matters, working conditions, except that such term does not include policies, practices, and matters - (A) relating to political activities prohibited under subchapter III of chapter 73 of this title; (B) relating to the classification of any positions; or (C) to the extent such matters are specifically provided for by Federal statute. It does not include policies, practices and matters relating to prohibited political activities, to the classification of any position, or the extent the matters are specifically provided for by statute.

CONFIDENTIAL EMPLOYEE

An employee who acts in a confidential capacity with respect to an individual who formulates or administers management policies in the field of labor-management relations.

CONSULTATION

It is different than negotiation. Before the agency issues a regulation, management will discuss with the union their concerns.

"COVERED BY" DOCTRINE

A doctrine under which an agency does not have to engage in midterm bargaining on particular matters because those matters are already "covered by" the existing agreement.

DUES ALLOTMENT (DUES WITHHOLDING, DUES CHECK-OFF)

Practice whereby the employer, by agreement with the union (and upon written authorization from the employee), regularly withholds union dues from bargaining unit employees' wages and transmits these funds to the Union. Dues allotment occurs without charge to the employee or the union. [See 5 U.S.C.7115.]

DURATION CLAUSE

A clause in a collective bargaining agreement which specifies the time period in which the agreement is in effect. Duration clauses are normally three years in length. Duration clauses may provide for automatic termination on a certain date, or automatic renewal for a specific period of time.

DUTY TO BARGAIN

Broadly conceived, it refers to both (1) the *circumstances* under which there is a duty to give notice and, upon request, engage in bargaining (see MID-TERM BARGAINING) and (2) the negotiability of specific proposals. Disputes over the former usually are processed through the Authority's unfair labor practice procedure and frequently involve make-whole and status *quo ante* remedies. Disputes over the latter usually are processed through the Authority's no-fault negotiability procedure in which the Authority determines whether or not there is a duty to bargain on the proposal at issue.

EXCEPTION TO ARBITRATION AWARD

Under 5 U.S.C.7122, either party to arbitration may file with the Federal Labor Relations Authority an exception (appeal) to an arbitrator's award because the award is 1) contrary to any law, rule or regulation; or 2) on other grounds similar to those applied by Federal courts in private sector labor-management relations (e.g., award does not draw its essence from the agreement; resolving issues not submitted to arbitration; granting remedy that exceeds claimed violation). The Authority will not consider an exception with respect to an award relating to actions taken in accordance with 5 U.S.C.4303 and 5 U.S.C.7512. See also 5 CFR Part 2425.

EXCESSIVE INTERFERENCE

A balancing test that the FLRA applies to proposals that are arrangements for employees adversely affected by the exercise of management's rights in order to determine whether they are negotiable appropriate arrangements. The test involves balancing the extent to which the proposal ameliorates anticipated adverse effects against the extent to which it places restrictions on the exercise of management's rights.

EXCLUSIVE RECOGNITION/REPRESENTATIVE

The status conferred on a labor organization which (1) receives a majority of votes cast in a representation election; and (2) is certified by the Federal Labor Relations Authority (FLRA) to

represent all employees in an appropriate unit. Certification by the FLRA means that only this particular union is authorized to act for the employees in the bargaining unit and negotiate agreements on their behalf.

FAIR REPRESENTATION, DUTY OF

The union's duty to represent the interests of all unit employees without regard to union membership.

FEDERAL LABOR RELATIONS AUTHORITY (FLRA or AUTHORITY)

An administrative body empowered by Title VII of the Civil Service Reform Act of 1978 which interprets and oversees compliance with the Federal Service Labor-Management Relations Statute. The FLRA maintains 9 regional offices.

FEDERAL MEDIATION AND CONCILIATION SERVICE (FMCS)

An independent Federal agency which provides mediators to assist the parties involved in negotiations or in a labor dispute in reaching a settlement. FMCS provides lists of suitable arbitrators on request and engages in various types of "preventive mediation."

FEDERAL SERVICE IMPASSES PANEL (FSIP or PANEL)

Organizational entity within the FLRA which resolves bargaining impasses in the Federal service. The Panel may recommend procedures, including arbitration, for the settlement of impasses or it may direct settlement of the impasse itself. It is considered the legal alternative to strikes and lockouts as a means to resolving impasses in the Federal sector.

FEDERAL SERVICE LABOR-MANAGEMENT RELATIONS STATUTE (FSLMRS) Title 5, United States Code, sections 7101 - 7135. The statute can be downloaded from <http://www.law.cornell.edu/uscode/5/ch71.html>

FORMAL DISCUSSION

Under 5 U.S.C. 7114 (a)(2)(A), a discussion between an agency representative(s) and a bargaining unit employee(s) concerning any grievance or any personnel policy or practice or other condition of employment which affects bargaining unit employees. The exclusive representative must be given the opportunity to be represented at these meetings.

GENERAL COUNSEL

The General Counsel of the Federal Labor Relations Authority investigates unfair labor practice (ULP) charges and files and prosecutes ULP complaints. He/she also supervises the Authority's Regional Directors who, in turn, have been delegated authority by the FLRA to process representation petitioners.

GOOD FAITH BARGAINING

The standard of dealings imposed on an agency and an exclusive representative which includes the obligation to approach negotiations with a sincere resolve to reach a collective bargaining agreement; to be represented by properly authorized representatives who are prepared to discuss and negotiate; to meet at reasonable times and convenient places as frequently as necessary; to avoid unnecessary delays in negotiations; and in the case of the agency,

to furnish relevant and necessary data requested by the union to the extent required or permitted by law.

GRIEVANCE

Any complaint by an employee concerning any matter relating to the employment of the employee; by a labor organization concerning any matter relating to the employment of an employee; or by a labor organization, an agency, or an employee concerning interpretation or violation of the collective bargaining agreement or a violation, interpretation or application of a law, rule or regulation affecting conditions of employment. Whether a complaint is formally recognized and handled as a grievance depends on whether the subject of the complaint is covered under the grievance procedure.

GRIEVANCE ARBITRATION (RIGHTS ARBITRATION)

A third party procedure which may interpret language in a negotiated agreement, or otherwise resolve grievances under the contract. This form of arbitration determines what the rights of the parties are with respect to the negotiated agreement, laws, rules or regulations.

IMPACT AND IMPLEMENTATION (I&I) BARGAINING

A statutory right of the union under 5 U.S.C.7106(b)(2) to negotiate on the procedures used to implement management decisions made under 5 U.S.C.7106(a).

IMPASSE (DEADLOCK, STALEMATE)

A situation in which the parties are unable to reach a settlement or agreement.

INTEREST

In interest-based bargaining, the concerns, needs, or desires behind an issue: why the issue is being raised.

INTEREST ARBITRATION

Occurs when an impartial third party resolves disputes concerning contract negotiations. It is used sparingly since it is frequently considered an undesirable substitute for negotiations. The FSIP normally performs the interest arbitration function.

INTEREST-BASED BARGAINING (IBB)

A bargaining technique in which the parties start with (or at least focus on) interests rather than proposals; agree on criteria of acceptability that will be used to evaluate alternatives; generate several alternatives that are consistent with their interests, and apply the agreed-upon acceptability criteria to the alternatives so generated in order to arrive at mutually acceptable contract provisions. The success of the technique depends, in large measure, on mutual trust and a willingness to share information. But even where this is lacking, the technique, with its focus on interests and on developing alternatives, tends to make the parties more flexible and open to alternative solutions and thus increases the likelihood of agreement.

INTERNAL SECURITY PRACTICES

A right reserved to management by title 5, United States Code, section 7106(a)(1). The right to determine the internal security

practices of an agency isn't limited to establishing "those policies and actions which are part of the Agency's plan to secure or safeguard its physical property against internal and external risks, to prevent improper or unauthorized disclosure of information, or to prevent the disruption of the Agency's activities." It also extends to safeguarding the agency's personnel.

INVESTIGATORY EXAMINATION

An examination conducted by an agency representative in which an employee is questioned as part of an inquiry to get facts. [See **Weingarten Right**.]

LABOR ORGANIZATION (UNION)

An organization composed in whole or in part of employees, in which employees participate and pay dues, and which has as a purpose the dealing with an agency concerning grievances and conditions of employment. [See **Bargaining Unit**.]

MANAGEMENT OFFICIAL

An individual who formulates, determines, or influences the policies of the agency. Such individuals are excluded from appropriate units.

MANAGEMENT RIGHTS

The right of management to make day-to-day personnel decisions and to direct the workforce without notification to or consultation with the exclusive representative. Any changes in the exercise of these rights, however, would require notice to the exclusive representative and negotiations upon demand, if requested in a timely manner, on the impact and implementation of the decision. [See 5 U.S.C.7106]

MEDIATION

A procedure by which an impartial third party (mediator) is used to settle disputes. The mediator assists in resolving the dispute by attempting to find a solution satisfactory to both parties in a dispute, but cannot render any binding decisions. Mediation is required before a negotiated impasse can be referred to the FSIP.

MID-TERM NEGOTIATIONS

The right, under certain circumstances, to initiate bargaining during the term of a collective bargaining agreement.

MISSION OF THE AGENCY

A right reserved to management by title 5, United States Code, section 7106(a)(1). Although illustrative case law on this particular right is meager, it is generally recognized that the right encompasses the determination of the products and services of an agency.

NATIONAL CONSULTATION RIGHTS (NCR)

A union accorded national consultation rights is entitled to be consulted on agency-wide regulations before they are promulgated. NCR is to be distinguished from consultation rights with respect to Government-wide regulations, under which a union accorded such recognition, must be consulted on proposed Government-wide regulations before they are promulgated.

NATIONAL UNION

Ordinarily, a union composed of a number of affiliated local unions. The Bureau of Labor Statistics in its union directory defines a national union as one with agreements with different employers in more than one state, or an affiliate of the AFL-CIO, or a national organization of employees.

NEGOTIABILITY

Refers to whether a given topic is subject to bargaining between an agency and the union. The Federal Labor Relations Authority makes the final decision whether a subject is negotiable or nonnegotiable.

NEGOTIABILITY APPEAL (PETITION FOR REVIEW)

If an agency believes that a union proposal is contrary to law or applicable regulation, or is otherwise nonnegotiable under the statute, it may inform the union of its refusal to negotiate. 5 U.S.C.7117 provides a right to appeal the agency's determination of non negotiability to the FLRA.

NEGOTIATED GRIEVANCE PROCEDURE

A systematic procedure agreed to by the negotiating parties for the resolution of grievances. The negotiated grievance procedure is applicable only to employees in the bargaining unit. The scope of the negotiated grievance procedure is negotiated by the parties and may include certain matters for which a statutory appeal procedure exists, unless the parties negotiate their exclusion. Several matters **cannot** be included under its scope: 1) actions taken for violations of the Hatch Act; 2)retirement, life insurance or health insurance; 3)a suspension or removal taken in the interest of national security; 4) any examination, certification, or appointment; or 5) the classification of any position which does not result in the reduction in grade or pay of an employee. 5 U.S.C.7121 requires the inclusion of a negotiated grievance procedure in all agreements and requires binding arbitration as the final step of the negotiated grievance procedure.

OFFICIAL TIME

Duty time that is granted to employees acting on behalf of the exclusive representative to perform representational duties without loss of pay or charge to an employee's leave account. Official time may not be granted for internal union business
[See 5 U.S.C.7131].

OPM

Refers to the Office of Personnel Management (OPM). OPM supports Government program managers in their personnel management responsibilities through a range of programs. This includes administering a merit system for federal employment; providing services related to retirement, health benefits and life insurance benefits for federal employees.

OPPOSITION TO EXCEPTION TO ARBITRATION AWARD

If a party files an exception (appeal) to an arbitrator's award, the other party may oppose the exception to the Authority in accordance with 5 CFR 2425.1. Oppositions to exceptions must be filed within thirty (30) days after the date of service of the exception.

PACKAGE BARGAINING

A negotiating technique whereby contract proposals are grouped into a "package " usually offering substantial concessions by one party, in exchange for substantial gains. Frequently, the package proposal will be advanced with the condition that it must either be accepted as presented or rejected entirely.

PARTICULARIZED NEED

The Authority's analytical approach in dealing with union re-quests for information under title 5, United States Code, section 7114(b)(4). Under this approach, the union must establish a "particularized need" for the information and the agency must assert any countervailing interests. The Authority then balances the one against the other to determine whether a refusal to provide information is an unfair labor practice.

PAST PRACTICE

Existing practices sanctioned by use and acceptance, which amount to terms and conditions of employment even though not specifically included in the collective bargaining agreement. In order to constitute a binding past practice, it must be established that (1) the practice must involve a condition of employment; and (2) the practice must be consistently exercised for an extended period of time and followed by both parties, or followed by one party and not challenged by the other over a substantially long duration. It should be noted that if a matter is not a condition of employment, it does not become a condition of employment either through practice or agreement.

PICKETING

Demonstrating, usually near the place of employment, to publicize the existence of a labor-management dispute. This is commonly called **Informational Picketing** and is directed toward advising the public about the issue in dispute. This is specifically protected by 5 U.S.C. 7116 (b) so long as the picketing does not interfere with agency operations. This is not to be confused with a "strike" as Federal employees are not permitted to strike under Federal law. Informational picketing may only be conducted outside an employee's established duty hours or the employee must be in an approved leave status.

RATIFICATION

Formal approval of a newly negotiated agreement by vote of the labor organization members affected.

REOPENING CLAUSE

Clause in a collective bargaining agreement stating the time or the circumstances under which negotiations can be requested prior to the expiration of the contract. Reopenings usually restrict the number of issues subject to negotiation during the term of an agreement.

SENIORITY

Term used to designate an employee's status relative to other employees for determining order of overtime assignments, vacations, etc. Straight seniority is seniority acquired solely through length of service. Departmental or shop seniority considers status factors in a particular department or shop, rather than the entire agency. A seniority list is a ranking of individual workers in order of seniority.

SHOP STEWARD (UNION STEWARD, AREA STEWARD)

A local union's representative in an organization (department, shop, etc) designated to carry out union duties, represent employees in presenting grievances, collect dues and solicit new members. Stewards are usually fellow employees who are trained by the union to carry out these duties.

STRIKE

A temporary stoppage of work by a group of employees in connection with a labor dispute. In the Federal sector, strikes are specifically prohibited by Federal law and constitute an unfair labor practice under Section 7116(b)(7) of the Federal Service Labor-Management Relations Statute. The Statute also prohibits slowdowns, sickouts and related tactics.

SUPERVISOR

Under 5 U.S.C.7103, an individual employed by an agency having authority to hire, direct, assign, promote, reward, transfer, furlough, layoff, recall, suspend, discipline, or remove unit employees; adjust their grievances or to effectively recommend such action. The performance of one or more of these duties qualifies an employee as a "supervisor" for labor relations purposes and excludes the employee from the bargaining unit. However, nurses and firefighters must spend a preponderance of their time doing so to be considered supervisors.

* Note: AGR soldiers that supervise Military technicians must follow the LMR program and labor agreement. Many AGR soldiers perform the tasks as described above.

UNFAIR LABOR PRACTICE (ULP)

Action by either an employer or union which violates rights granted by the Federal Service Labor-Management Relations Statute. The agency, union or employees may file a ULP complaint. [See 5 U.S.C.7116]

UNILATERAL ACTION

Implementation of management decisions concerning personnel policies and matters affecting working conditions without providing the union advance notice of such changes in working conditions and an opportunity to negotiate to the extent permitted by law.

UNION

A labor organization "composed in whole or in part of employees, in which employees participate and pay dues, and which has as a purpose the dealing with an agency concerning grievances and conditions of employment..."

WAIVER

An agreement reached between union and management whereby one party voluntarily gives up rights afforded to it. For waivers to be enforceable, they must be "clear and unmistakable." It should be noted that management cannot waive rights afforded to management under 5 U.S.C.7106 (a).

WEINGARTEN RIGHT

Refers to the right of a bargaining unit employee to be represented by the union when (1) the employee is examined in an investigation (investigatory examination) conducted by an agency representative; (2) the employee reasonably believes disciplinary action against him or her may result; and (3) the employee requests union representation. [See Investigatory Examination.]

ZIPPER CLAUSE

An agreement provision specifically barring any attempt to reopen negotiations during the terms of the agreement. [For a related term, see Reopening Clause.]

PART II Discipline and Adverse Action

2-1 GENERAL: One of the most difficult issues to handle as a supervisor is dealing with employees that engage in misconduct or violate Standards of Conduct. Appropriate corrective action should be taken. Examples of unacceptable conduct include absence without approved leave, failure to follow supervisory instructions/orders, misuse of Government property, falsifying travel voucher, etc. The main reference guide and regulation *Technician Personnel Regulation (TPR) 752 (Discipline and Adverse Action)*.

2-2 RESPONSIBILITIES:

a. The Adjutant General (TAG).

(1) The TAG has jurisdiction over all adverse actions in the Illinois National Guard as outlined in PL 46-486 § 709(e)(4).

(2) The TAG may hear and rule on appeals but there is no appellant authority outside from the TAG.

b. Human Resource Officer (HRO).

(1) Appoints members of the HRO staff to administer discipline and adverse action program.

(2) Provides guidance to the HRO staff members that administer this program.

c. HRO Specialist.

(1) Responsible for advising and assisting managers and supervisors on adverse action issues.

(2) After review gives clearance on procedural aspects of the action. This must be obtained before issuance of a letter of reprimand, proposed adverse action notice, original decision, or final decision.

(3) Represents the agency during adverse action hearings. Some cases may require the State Staff Judge Advocate to represent the agency, and the HRO Specialist may assist the SJA.

(4) Insures adverse actions are administratively processed.

(5) Maintains the original case file.

d. Supervisors.

(1) As a supervisor, it is your duty to take steps to correct an employee's misconduct, and you should do so as soon as possible. In addition to maintaining documentation of the inappropriate behavior, you must work with your HRO Specialist to decide on and administer the appropriate action. The action taken depends on the severity of the

misconduct and the penalties issued for similar offenses. In most situations, you will pursue a "progressive" course of action.

(2) If a supervisor believes that a situation calls for adverse action they must coordinate with the HRO specialist.

(3) They must also inform their chain of supervision of the possible adverse action.

(4) Only issue letters of reprimand, notice of proposed adverse action, after receiving clearance from the HRO Staff Specialist.

(5) Send the original letters and supporting documentation to the HRO Staff Specialist and keep a copy in the technician's supervisory file. Provide copies to the technician and/or union representative.

(6) Assist and cooperate with the HRO and SJA during any administrative hearing.

e. Deciding Official.

(1) Provide guidance to supervisors on how to manage discipline within the work unit(s).

(2) Coordinate actions with the supervisor, HRO Staff Specialist, and possibly SJA.

(3) Receive the response (verbally, written, or both) from the employee.

(4) Grant or justifiably deny request(s) from the employee for an extension to reply if needed.

(5) Fully review the relevant factors (Appendix A-2, TPR 752) of the case IAW TPR 752 to either sustain or not to sustain the charge(s) listed in the proposed adverse action and what the employee presents in their response.

(6) Draft original decision for HRO review.

(7) After HRO review and approval, issue original decision to the technician and obtain signature. If the technician has a representative make sure they are aware of the time you will issue the letter. Prepare copies for the employee, the representative, and your own file.

(8) Send original decision letter to HRO for action.

(9) Assist and cooperate with the HRO and SJA during any administrative hearing.

2-3 PROGRESSIVE ACTIONS:

a. Progressive discipline begins with relatively minor actions such as documented counseling, but can go so far as to remove the employee from federal service. There are some acts of misconduct that are so serious that immediate removal or demotion is initiated without first issuing documented counseling or reprimand. Examples of such offenses include but are not limited to:

- (1) Acceptance of an illegal gratuity (bribe)
- (2) Making threats of physical harm
- (3) Excessive AWOL
- (4) Sexual harassment
- (5) Theft or misuse of Government property
- (6) Making false entries on reports, vouchers, or applications.

b. Progressive actions ensure that the employee is given adequate notice of the problem, identify what the employee must do to rectify it, and state the consequences if they do not correct or cease the inappropriate conduct.

c. Progressive actions are as follows:

- (1) Counseling (recorded on NGB Form 904-1 or Supervisor's Brief)
- (2) Oral Admonishment/Warning (recorded in the 904-1 or Supervisor's Brief)
- (3) Official Letter of Reprimand (filed in the employee's Official Personnel Folder)
- (4) Short Suspension
- (5) Longer Suspension
- (6) Reduction in grade or pay

*Note: This does not imply that you have to suspend the technician before you reduce in grade or remove from their position. This is listed to provide the supervisor another tool to curb undesirable behavior.

- (7) Removal of the employee from federal service

2-4 RESOURCES:

a. If a supervisor is considering an adverse action they should first consult *TPR 752 Discipline and Adverse Action*. After reviewing the document contact your next level supervisor or the HRO.

b. The HRO Staff Specialist will advise you on courses of action for your consideration.

c. One of the best resources is your supervisor's file on each technician. If the technician commits a violation of a rule, regulation, or policy, you should document it. If the undesirable actions become more frequent then it is your responsibility to inform the employee that their behavior is undesirable and needs to be changed. If they won't change their behavior then you will need to take action to maintain discipline in your work unit. Make sure if you document this behavior and the action(s) on either the NGB 904 or the Supervisor Brief that it is in pencil and the technician has seen it and initialed the entry.

d. A flow chart displaying the five step adverse action process is included in Appendix A.

e. Examples of letters are included in Appendices.

(1) Letter of Reprimand - Appendix B

(2) Proposed Adverse Action - Appendix C

(3) Original Decision - Appendix D

PART III Supervisor's Work Folder

3-1 GENERAL: Supervisors are required to maintain a work folder for each technician under their supervision. Within these folders are the documents that will enhance effective supervision and management of the technician workforce. The folder should be an up-to-date record relative to all personnel actions, training, performance ratings, service history, awards, conduct, disciplinary actions, discussions relevant to a technician's employment, information for requesting personnel actions and as a reference and locator file. CLERICAL PERSONNEL WILL NOT BE DELEGATED THE RESPONSIBILITY FOR FILING AND MAINTAINING THE FOLDER.

3-2 NGB FORM 904-1, SUPERVISOR'S Record of Technician

EMPLOYMENT/SUPERVISORS EMPLOYEE BRIEF: The NGB Form 904-1 or the Supervisors Employee Brief (Supervisors Employee Brief may substitute the 904-1) serves as the basic service history file in the supervisor's work folder. Changes in technician employment data are to be recorded on the NGB Form 904-1/ Supervisors Employee Brief as soon as possible.

a. The Supervisor must create a work folder and complete the NGB 904-1 or the Supervisor Employee Brief. The Supervisor Employee Brief may be requested from the HRO (supervisor is given option of use of either form).

b. The Supervisor Employee Brief is recommended as it lists all previous personnel actions generated on the technician. The Brief is automatically sent to the supervisor upon appointment of a new technician and may also be requested from HRO. Information that should be maintained on the forms is as follows:

- (1) Service Computation Date from SF 50 Item 31.
- (2) Locator information such as emergency contact, home address and telephone number.
- (3) Record performance-rating scores at time of official rating.
- (4) OPM, military and civilian training received during technician employment.
- (5) Record incentive award, i.e., commendation certificates, length-of-service, suggestion awards.
- (6) Comments and discussions that would be considered in making determinations relative to a technician's employment should be entered. Notations of oral admonishments (along with the technician's initials) will be made in pencil and will be deleted from the form when it is determined that it is no longer necessary or relative to a continuing/recurring problem. (Please review the applicable Labor Contract as required for bargaining members.)
- (7) Continuation sheets may be created as necessary to record additional data or to continue any item from the NGB Form 904-1 or Supervisors Employee Brief. The basic NGB Form 904-1 or Supervisors

Employee Brief must reflect the number of continuation sheets in existence at all times.

3-3 CONTENTS AND RETENTION SCHEDULES OF RECORDS:

a. Performance Appraisal and Standards - Will be retained for 3 years from the effective date, unless superseded through an administrative or judicial procedure.

b. Records kept during appraisal period - Quality control records, production records, or similar records used to track technician performance during appraisal period may be retained until Performance Appraisal is affected.

c. Notice of declining or poor performance - Retained until Performance Appraisal is affected and documentation is no longer needed.

d. Notice of change to lower grade - Will be retained until disposal of unacceptable performance rating (see para a).

e. Notice of Removal - Retained until disposal of work folder.

f. NGB Form 904-1/Supervisors Employee Brief - Will be retained for life of work folder.

g. SF 52 - A copy may be retained until the action is complete.

h. Letter of Appreciation - Will be retained for life of work folder when letter is given to express appreciation for work performance that is better than normally expected.

i. Individual Development Plan (IDP) - If an IDP is maintained, retain it until update is required.

j. Non disciplinary and disciplinary adverse action correspondence - May be retained until no longer related to continuing problem. This does not replace the official adverse action file maintained in HRO.

k. DMAIL Form 237, Application for National Guard Technician Identification Card - Retained for life of work folder.

3-4 SUPERVISOR'S PERSONAL NOTES: When supervisors retain personal notes, such notes are not considered part of the supervisor's work folder. These notes:

a. Are retained for the personal use of the supervisor only, as a memory aid; and

b. Are not circulated to anyone else including other supervisors, the supervisor's secretary, or clerical support personnel; and

c. Are not under the control of the agency, i.e., not required by the agency and may be retained or discarded solely as the supervisor sees fit.

3-5 CORRECTION OF RECORDS: A correction of records that requires a change to or removal of documents in the supervisor's work folder must be made as soon as possible, but not less than 30 calendar days after it is determined that such correction is required. The correction must be made to all records regardless of location.

3-6 SAFEGUARDING THE RECORDS: First-line supervisors are responsible for the filing of the supervisor's work folder and will insure it is filed in a location secure enough to protect the confidentiality of the records and thereby preserve the privacy of the individual whose name appears thereon. Because the information contained in the folder is of a personal nature, access will be limited to management officials, the technician concerned, and individuals to whom the technician has given written permission.

3-7 POSITION DESCRIPTIONS: As a minimum, one certified copy of each position description applicable to technicians supervised shall be maintained on file by each supervisor.

3-8 DISPOSITION OF SUPERVISORS WORK FOLDER: The disposition of the work folder including NGB 904-1 or Supervisors Employee Brief and any continuation sheets is as follows:

a. When the technician moves to a new position serviced by the same HRO, the folder will be forwarded to gaining supervisor.

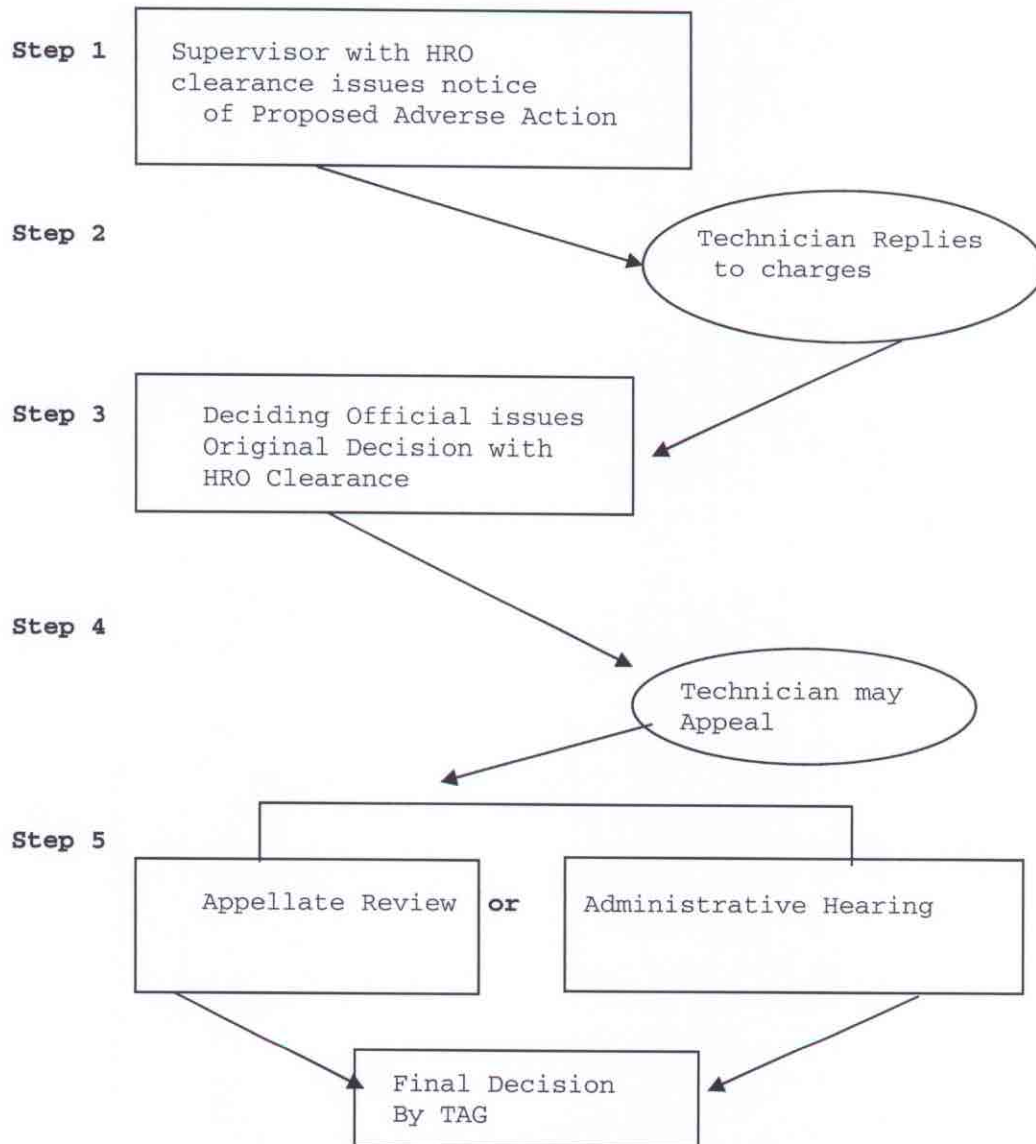
b. When the technician moves to a new position serviced by a different HRO, or when the technician is separated from Federal service, the supervisor will destroy the folder 60 days after the separation date.

c. When a technician is ordered to extended active duty, the folder may be destroyed 60 days after the separation date. A new folder will be established if the technician exercises restoration rights.

d. If the folder is needed for a period beyond 60 days for reasons such as pending litigation, adverse action appeals, grievance procedures, etc., the file should be forwarded to the HRO instead of being destroyed.

e. Supervisors must destroy work folder records by forwarding the records (clearly marked as obsolete) to the technician or by shredding, burning or pulping.

APPENDIX A
5 STEP ADVERSE ACTION PROCESS



There is no appeal beyond the TAG

APPENDIX B
SAMPLE LETTER OF REPRIMAND

MEMORANDUM FOR

SUBJECT: Letter of reprimand

1. You are receiving this letter of reprimand for (give charge and circumstances. Be detailed include dates)
2. I can find no justification for your actions. Further occurrences of this behavior may result in more severe disciplinary action being taken.
3. This letter of reprimand will be made a matter of record and a copy will be placed in your Official Personnel Folder for a period not to exceed _____ unless subsequent incidents warrant further retention.
4. If your conduct is due to a personal problem, I recommend you seek the help of the Employee's Assistance Program.
5. If you believe there is a reason why this reprimand is improper, you are entitled to file a grievance within 15 calendar days after receiving this letter. I will make TP Plan 771, grievance procedures, or the negotiated grievance procedure as appropriate available to review, upon your request, at reasonable times and for reasonable periods during normal duty hours.

Signature Block

Receipt acknowledged:

Date: _____

Witness _____

APPENDIX C
SAMPLE PROPOSED ADVERSE ACTION LETTER

MEMORANDUM FOR:

SUBJECT: Notice of Proposed Adverse Action

1. This will serve as notification that I propose to (suspend or remove) you for one calendar day from your position of _____ (WG-11/05).
2. The reason this action is being taken (offense). (State the reason, the facts, and dates.)
3. I am taking this action because (give rationale for selection of penalty - i.e. severity of offense, previous offenses, etc.)
4. You have the right to reply to this proposed action orally, in writing, or both. Your written reply should be sent to (Name your next level supervisor). Arrangements for an oral reply can be made by contacting (name your next level supervisor) at (address)
5. Your written and/or oral reply must be received by (date - should be 10 days from receipt of letter or check your labor agreement). You may request an extension of this deadline by providing your reason(s) to (name your next level supervisor) who will either grant or deny your request.
6. You have a right to be represented by the union or any other designated representative to assist or act for you in making your response, if you wish. Such a representative must be designated by you, orally or in writing to the official to whom you submit your answer.
7. You and your representative, if otherwise in an Illinois National Guard technician duty status, will be allowed a reasonable amount of time to review the material relied on to support these reasons, to secure statements, and to prepare and submit an answer to this notice. You must arrange with each appropriate supervisor for use of official time.
8. If your conduct is due to a personal problem, I recommend you seek the help of the employee's assistance program. If a personal problem exists, you should also inform the official to whom you submit your answer.
9. You may contact (**check with HRO for names**) in the HRO office for procedural assistance. They can be reached at 217/761-_____.
10. As soon as possible after your answer is received, or if you do not answer, you will be given a written decision. Meanwhile, you are authorized to remain in a normal duty and pay status.

Signature Block

Receipt Acknowledged:
Date:

APPENDIX D
SAMPLE ORIGINAL ADVERSE ACTION

MEMORANDUM FOR:

SUBJECT: Original Decision

1. On (Date), (supervisor) proposed that you be suspended for ____ day(s) from your technician position. I have decided that your suspension is for just cause and will promote the efficiency of the service. Your suspension will begin on **(DATE)** for ____ calendar day(s). You are to return to work on **(DATE)**.
2. I have given full consideration to your (oral reply of date) (written reply of date) (oral and written replies of date).

OR

I have received no reply from you.

3. I find all reasons outlined by (Supervisor) sustained.

OR

I find all reasons outlined by (Supervisor) in paragraphs ____ & ____ sustained.

NOTE: If some of the reasons given in the proposed action are not sustained or if all reasons are sustained but proposed penalty is reduced, then you must explain why.

4. You may appeal my decision by written notice addressed to Major General **(TAG's full Name)**, The Adjutant General of Illinois. Your written request for appeal may be sent to the Human Resources Office (HRO) and must be postmarked no later than 20 calendar days after receipt of this letter. Any request for extension of time must be in writing to The Adjutant General with justification for the additional time. Only the Adjutant General can decide to grant or deny an extension. Your appeal must state whether you desire an appellate review or an administrative hearing, but not both. The appellate review is accomplished by The Adjutant General without the involvement of a National Guard Bureau administrative hearing examiner. It involves a review of all pertinent records including material submitted by you with your appeal. The administrative hearing means that a hearing examiner from another State will gather all available facts through an administrative hearing process and then issue a report of findings and recommendations to The Adjutant General. Regardless of the appeal method selected a final decision on the appeal is issued by The Adjutant General.

5. You may receive procedural assistance by contacting **(Check with HRO for names)** of the Human Resource Office. They may be reached at 217-761-_____.

SIGNATURE BLOCK

A copy of this letter was received by me on _____
(date) (Time)

(Signature of Technician)

APPENDIX E
CHECKLIST FOR MAINTENANCE OF SUPERVISORY RECORDS

This Checklist will help you to maintain your supervisory records. It covers records and documents that are maintained in your employees' supervisory work folders, as well as some that do not have to be included in the work folders, but that you need to maintain for planning and other purposes. Either way, if you can check off each of the following items, your records are in good shape. Place a copy of this checklist in front of each of the employees' folders.

_____ My work folders are physically located near me, so that I can refer to them conveniently and as often as needed.

_____ My work folders are protected against casual access, inappropriate disclosure, or invasion of personal property.

_____ I personally maintain the work folders of my technician staff, and do not pass responsibility on to a secretary or other administrative person for filing and updating them.

_____ I have a NGB Form 904-1, Supervisor's Record (or a SUPBRF), on each of my technicians.

_____ I maintain current entries in Sections 7,8,9, and 10 of the NGB Form 904-1 for each of my subordinate technicians.

_____ I receive copies of SF-50s, Notification of Personnel Action, on change actions for my technician staff.

_____ I post the information from all SF-50s to Section 11 of the appropriate NGB Form 904-1 promptly, and give the forms to the subject technicians.

_____ I record the dates and subjects of my discussions with each member of my staff in Item 12 of that technician's NGB 904-1.

_____ When I must add an additional NGB Form 904-1 or supplemental sheet of paper, I write the sequential number of 904-1 pages on the new page.

_____ I have current copies of NGB Form 430, Performance Standards and Critical Elements, and NGB Form 430-1, Performance Appraisal, for all of my technicians.

_____ I have removed all performance-related records that are more than three (3) years old from each file, either by destroying them or marking them obsolete, and giving them to the appropriate technician for disposition.

_____ I have a copy of the Optional Form 8/Position Description for each basic position authorized in my unit.

_____ I have a projected leave schedule for each employee I supervise.

_____ I have recently reviewed and am familiar with the rules governing technician access to the work folder pertinent to the technician.

_____ I have reviewed any collective bargaining agreement(s) that cover(s) my subordinate staff, for any additional record keeping requirements that it/they may include.